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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/772,581   | 02/05/2004  | Brian P. Carney      | 14281.IUSU1         | 2269             |
| 7590   | 03/09/2005  |                      | EXAMINER            |                  |
| Merchant & Gould P.C.<br>P.O. Box 2903<br>Minneapolis, MN 55402-0903 |             |                      | OKEZIE, ESTHER O    |                  |
|  |             |                      | ART UNIT            | PAPER NUMBER     |
|  |             |                      | 3654                |                  |

DATE MAILED: 03/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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|                              |                              |                  |  |
|------------------------------|------------------------------|------------------|--|
| <b>Office Action Summary</b> | Application No.              | Applicant(s)     |  |
|                              | 10/772,581                   | CARNEY, BRIAN P. |  |
|                              | Examiner<br>Esther O. Okezie | Art Unit<br>3654 |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-28 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

|  |  |
|--|--|
| <ol style="list-style-type: none"> <li>1)<input checked="" type="checkbox"/> Notice of References Cited (PTO-892)</li> <li>2)<input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)</li> <li>3)<input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br/>Paper No(s)/Mail Date <u>5/06/2004</u>.</li> </ol> | <ol style="list-style-type: none"> <li>4)<input type="checkbox"/> Interview Summary (PTO-413)<br/>Paper No(s)/Mail Date. _____.</li> <li>5)<input type="checkbox"/> Notice of Informal Patent Application (PTO-152)</li> <li>6)<input type="checkbox"/> Other: _____.</li> </ol> |
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## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear what the is meant by "... wherein the mortarboard has an outermost thickness dimension w and a central most dished-out surface, and the central most portion is recessed less than about 3 inches from the outermost thickness dimension w" because it is unclear what dimension is specified by "w."

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mathews.
3. Regarding claim 1,4,5, 6,16, and 26 Mathews discloses a plaster pallet for retaining and carrying mortar or plaster comprising a substantially flat piece of material defining a holding surface area (10), the holding surface area being continuously

contoured in a dished-out manner to facilitate the retention and carrying of mortar (see figure 1). It is unclear from the drawings and the description how far the outermost dimension is recessed from the central most portion. However, it would have been obvious to one of ordinary skill in the art to design the device wherein the central most portion is recessed less than about 0.375 to 3 inches from the outermost thickness dimension in order to allow sufficient space for the mortar to be held on the platform.

4. Regarding claim 2, Mathews discloses the device according to claim 1 including a carrying handle (11).

5. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mathews in view French Patent 1,494,129. Mathews meets the limitations of claim 2 but does not disclose a cut-out area portion configured to form the handle. French Patent 1,494,129 discloses a pallet for paint with a cut-out portion (7) for the handle. It would have been obvious to one of ordinary skill in the art at the time of the invention to include a cut-out portion for the handle of the pallet in order to more easily stabilize and grip the pallet.

6. Regarding claim 7 Mathews discloses the device according to claim 1, wherein the material includes two side edges and a bottom edge, and the holding surface area extends to the side and bottom edges of the material (see figure 1).

7. Regarding claim 8 Mathews discloses the device according to claim 7, further including a carrying handle (11).

8. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mathews in view French Patent 1,494,129. Mathews meets the limitations of claim 7 but does not disclose a cut-out area portion configured to form the handle. French Patent 1,494,129

discloses a pallet for paint with a cut-out portion (7) for the handle. It would have been obvious to one of ordinary skill in the art at the time of the invention to include a cut-out portion for the handle of the pallet in order to more easily stabilize the pallet.

9. Regarding claim 10 Mathews discloses the device according to claim 1, wherein the material includes two side edges and a bottom edge, and the holding surface area is separated from the side and bottom edges of the material by raised peripheral lip portions (10).

10. Regarding claim 11 Mathews discloses the device according to claim 11. It is unclear from the drawing and the description of the dimension of the peripheral lip portions. It would have been obvious to one of ordinary skill in the art to design the raised peripheral lip portions less than about 0.5 inches from the holding surface in order to provide confinement for the mortar when placed in the holding area so that the mortar will not fall off the platform edges.

11. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mathews in view O'Reilly. Mathews discloses the device according to claim 1, but does not disclose the material including a bottom surface that has supporting ribs formed integrally in the material. O'Reilly discloses a mortarboard cap with ribs (42) formed integrally in the material. It would have been obvious to one of ordinary skill in the art to include integral ribs in order to provide support for the pallet so that it does not collapse under the weight of the mortar.

12. Regarding claim 13 Mathews discloses the device according to claim 1, wherein the material includes a bottom surface that is configured to accommodate a support stand (column 2, lines 45-50).

13. Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mathews in view Blowers. Mathews discloses the device of claim 1, but does not disclose the device formed from a polymer material. Blowers discloses a masonry hawk made of plastic. It would have been obvious to one of ordinary skill in the art to make the device with plastic in order to make the device more durable, lightweight, and inexpensive to manufacture.

14. Regarding claim 17 Mathews discloses the device according to claim 1, wherein the device is substantially rectangular (see figure 1).

15. Regarding claim 18 Mathews discloses the device according to claim 1, wherein the front and rear surface of the material is able to nest together when more than one mortarboards (10) are stacked together.

16. Regarding claim 19 Mathews discloses a device for retaining and carrying mortar, the mortarboard comprising a generally flat piece of material (figure 1) defining a holding surface area configured to retain and carry mortar (15); and a carrying handle(11).

17. Regarding claim 20 Mathews discloses the device according to claim 18, wherein the holding surface area is substantially flat (figure 1).

18. Regarding claim 21 Mathews discloses the device according to claim 1, wherein the material includes two side edges and a bottom edge, and the holding surface area is

separated from the side and bottom edges of the material by raised peripheral lip portions (10).

19. Regarding claim 22 Mathews discloses the device of claim 21. It is unclear from the drawing and the description the dimension of the peripheral lip portions. It would have been obvious to one of ordinary skill in the art to design the raised peripheral lip portions less than about 0.5 inches from the holding surface in order to provide confinement for the mortar when placed in the holding area so that the mortar will not fall off the platform edges.

20. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mathews in view O'Reilly. Mathews discloses the device according to claim 1, but does not disclose the material including a bottom surface that has supporting ribs formed integrally in the material. O'Reilly discloses a mortar board cap with ribs (42) formed integrally in the material. It would have been obvious to one of ordinary skill in the art to include integral ribs in order to provide support for the pallet so that it does not collapse under the weight of the mortar.

21. Claims 24 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mathews in view Blowers. Mathews discloses the device of claim 1, but does not disclose the device formed from a polymer material. Blowers discloses a masonry hawk made of plastic. It would have been obvious to one of ordinary skill in the art to make the device with plastic in order to make the device more durable, lightweight, and inexpensive to manufacture.

22. Regarding claim 27 Mathews discloses the device according to claim 1, wherein the device is substantially rectangular (see figure 1).

23. Regarding claim 28 Mathews discloses the device according to claim 1, wherein the front and rear surface of the material is able to nest together when more than one mortarboards (10) are stacked together.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Esther O. Okezie whose telephone number is (703) 305-0433. The examiner can normally be reached on Mon-Fri 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Katherine A Matecki can be reached on (703) 308-2688. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Kathy Matecki

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